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HEZEKIAH EDWARDS,
Petitioner,
v.
J SOTO, et al.,
Respondents.

Case No.[14-cv-05622-WHO](#)

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner Hezekiah Edwards (“petitioner”) seeks federal habeas relief from several state convictions alleging (1) there was insufficient evidence as to his conviction for the Antioch murder and attempted murder; (2) his conviction for the Antioch murder and attempted murder was unlawfully based on the uncorroborated testimony of an accomplice, Manika Dunn; and (3) his conviction for the murder of Aberial Bradley was also unlawfully based on the uncorroborated testimony of accomplice Dunn. None of these claims has merit and, for the reasons set forth below, the petition for habeas relief is DENIED.

BACKGROUND

Petitioner is a California state prisoner serving a sentence of life imprisonment without the possibility of parole. Petitioner was found guilty by jury for (1) the murder of Willie Lavall, Jr., Cal. Penal Code § 187(a)-count one; (2) the attempted murder of John Denton, Cal. Penal Code §§ 664, 187(a)- count two; and (3) the murder of Aberial Bradley, Cal. Penal Code § 187(a)-count three. The California Court of Appeal affirmed the conviction on June 27, 2013. The California Supreme Court denied review on October 2, 2013. This federal habeas petition followed.

The California Court of Appeal summarized the facts in its June 27, 2013 unpublished

1 opinion:

2 *The Antioch murder and attempted murder*

3 On March 24, 2006, Willie Lavall, Jr. was killed outside an
4 apartment complex in Antioch where defendant Edwards's mother
5 lived. At the time of the killing Lavall was accompanied by Johnny
6 Denton, who was also shot but survived.

7 At approximately 4:30 p.m., Lavall and Denton, whose girlfriend
8 lived in the apartment complex, were in the parking lot putting new
9 license plates on Denton's car when a light green van pulled into the
10 lot. Two African American men with guns got out of the van. One
11 man pointed his gun at Lavall, and the other pointed his at Denton's
12 face. The men told Denton and Lavall to get into the van, which
13 was stopped some five to ten feet away. The assailants pushed
14 Lavall and Denton toward the van. As they neared the van, Denton
15 could see a third person in the driver's seat but could only say it was
16 an African American; he could not tell if it was a man or a woman,
17 nor could he judge height, body build, or facial features. There were
18 no seats in the van behind the front seat.

19 Lavall took off running and was gunned down by one of the two
20 assailants. He fell in front of the van. A nearby resident and the
21 apartment manager heard three gunshots and called 911.

22 Denton also ran and disappeared around a dumpster, then heard
23 Lavall screaming, and started to go back. He then realized he had
24 been shot in the arm and sat down, fearing loss of blood.

25 Police recovered two casings at the crime scene. A slug was also
26 pulled out of Lavall's chest. Later ballistics testing would show that
27 both casings recovered were fired from one nine-millimeter gun.

28 Based on Lavall's condition, location, and drag marks in the area, it
1 was determined that the van ran over him after he was on the ground
2 and dragged him into the street, where he was found by a neighbor.
3 One leg was folded under him in a contorted manner which made it
4 appear he had only one leg; his shoes had been dragged off his feet.²
5 There was road rash on his stomach, chest, face, and arms. Lavall
6 told police he had been shot while trying to run away from a vehicle.

7 Lavall's bullet wound was not fatal, as the bullet lodged just under
8 the skin of his chest. He was taken to the hospital, where he
9 suffered cardiac arrest and died. His cause of death was determined
10 to be blunt force trauma due to the dragging.

11 Neither Lavall nor Denton had any idea who their assailants were.
12 Denton described the man who held the gun on him as being five
13 feet eight inches tall, approximately 160 pounds, wearing a black
14 hoodie and a knit cap known as a beanie, having dreadlocks or little
15 twisties sticking out from under the beanie, with a little moustache.
16 He told a police officer that his assailant had gold teeth on both the
17 top and bottom. The apartment manager, who also saw the two
18 gunmen in the parking lot from a distance of 180 feet, described
19 both as being younger, slender African Americans, five feet ten to

six feet tall, one with a lighter complexion than the other. He was unable to identify either of the gunmen from photo lineups.

According to Denton, the man who accosted Lavall was more heavy-set, but the apartment manager thought they were both of a similar slighter build. Denton described the second gunman as being a Black male adult, 23 years old, five feet ten inches tall, 250 pounds, with dreadlocks or twisties sticking out from underneath his hat.

Despite the similarity in Denton's description of the second gunman's build,³ the prosecutor's theory was that Johnson and a second man wielded the guns while Edwards drove the van, evidently because Edwards did not match the description given by the apartment manager. The second gunman was never identified. There was no significant description of the driver other than that he or she was an African American whose complexion had a "little color."

Two months after the murder, Denton was shown four six-photo arrays and picked Johnson alone out of those lineups, expressing 80 percent certainty Johnson was the man who held the gun on him.⁴ He was equally sure at the preliminary examination. Denton based his identification on Johnson's facial features, particularly his eyes and moustache. He was somewhat hesitant to identify Johnson as the gunman during the photo lineup because Johnson had short hair and did not have dreadlocks or twisties in the photo. The officer told him to imagine the man in the photograph with a different hairstyle, and Denton then picked Johnson. At trial four years after the crimes, Denton identified Johnson to a 60 percent or 70 percent level of certainty.⁵

Johnson, an African American, was five feet eight inches tall, 150 pounds, and 24 years old at the time of his arrest. He did not have dreadlocks or twisties in his hair, and it was stipulated that his hairstyle in March 2006 was the same short style as that pictured in the photo lineup. However, the lead investigator on the Oakland murder case testified it is common for criminals to disguise their appearance and it is easy to change the appearance of one's hair. Although Johnson lived in Oakland, Johnson's cell phone records show he was in Antioch at the time of the shooting, as was Edwards, and it may be inferred they traveled there together from Oakland.⁶

The initial police broadcast described the van as silver or cream-colored, occupied by three Black men. Shortly after intercepting that broadcast on his police scanner, a pizza delivery driver on Forty-Niner Way in Antioch saw three black men in their late teens or early twenties standing in a driveway across the street from a light green van. The van was parked headed in the wrong direction on the street. One Black man, described as five feet eight inches tall, with short hair, and 160–165 pounds, then ran across the street and jumped into the van and took off. After the van pulled out it made an abrupt U-turn.

The delivery driver wrote down the license plate. When a later police broadcast described the van used in the murder as light green,

1 he called the police and gave them the license number. He was
2 unable to identify either defendant as the man he saw jump into the
3 van, but he said Johnson's build, complexion, and hairstyle were
4 similar to those of the man he saw.

5 *The van*

6 The van proved to be the murder weapon. The license number
7 matched one that had been rented from the Fox Rent-a-Car agency
8 (Fox) at the Oakland airport. The police searched the van at Fox on
9 March 27. They discovered blood, tissue, and fiber on the
10 undercarriage. Testing of the blood showed it was Lavall's. The
11 van had back seats, but they were removable. The police impounded
12 the van.

13 According to Fox's records, the van had been rented in the name of
14 Aberial (April) Bradley, but there was evidence that Edwards had
15 been involved. The rental agent, Katrina Fritz,⁷ had met both co-
16 defendants previously through her boyfriend, David Bell.⁸ Fritz
17 sometimes rented vehicles to Edwards at a good rate because he was
18 a friend of Bell's. Fritz also knew Edwards's girlfriend, Manika
19 "Meka" Dunn.

20 Testifying as part of a plea agreement,⁹ Dunn recounted her
21 involvement with Bradley and Edwards in renting and returning the
22 van used in the Lavall murder. Edwards and Dunn could not rent a
23 car in their own names because neither had a valid driver's license or
24 credit card. Bradley agreed to sign for the rental car because she
25 was a friend of Edwards's mother and was a second mother figure to
26 Edwards. Fritz did not know Bradley outside of the rental
transaction, but Dunn and Bradley had become friends through
Dunn's dating relationship with Edwards.

On February 14, 2006, Bradley had come to Fox rental agency with
Edwards and Dunn and rented a Toyota Sienna van in her name.
Although Bradley drove the van out of the rental lot, Edwards took
over driving immediately afterwards. That van was traded in for a
Mazda van on March 7, which in turn was returned and another
Toyota Sienna (the murder van) was rented by Bradley on March
15. On that date Bradley and Dunn alone conducted the transaction
with Fritz; Edwards was not there. Edwards and Dunn, however,
shared use of the van through the rental period. Fritz confirmed that
she had seen Edwards driving one of the rented Siennas with Dunn
as a passenger. Around this same time, Edwards bought an
Oldsmobile Aurora.

One evening in March 2006 (inferably the night of Lavall's
murder), Edwards called Dunn while she was staying at a house on
Brookdale Avenue in Oakland with Yushica Skipper, whom she
referred to as her sister (though they were not biologically related).
Dunn had an apartment in Antioch which she shared with Edwards,
but she often stayed at Skipper's house because it was closer to
where she worked.

During the phone call, Edwards asked if anyone in the house had a
driver's license. Dunn said a friend named Tenisha had a license.
Edwards asked if Dunn and Tenisha could come with him to help

1 him pick up the rented van in Antioch. Dunn agreed. Cell phone
2 records show Dunn and Edwards spoke several times that evening,
3 including at 9:17 p.m. when they were both in Oakland.

4 Edwards arrived in his car and picked up the two women and drove
5 them to Antioch.¹⁰ Dunn's cell phone records confirm she was in
6 Antioch at 10:54 p.m., and Edwards's cell phone records show he
7 was in Pittsburg at 10:29 p.m. and in Antioch at 10:44 p.m. Dunn
8 drove the van back to Oakland from Antioch while Tenisha drove
9 back to Oakland in Edwards's car, following Dunn, with Edwards as
10 a passenger. When Dunn stopped the van at a Safeway store
11 parking lot to close the rear door, Edwards scolded her, saying,
12 "Man, I told you, this van is hot."

13 At Edwards's direction, Dunn parked the van in East Oakland
14 somewhere in the vicinity of 73rd Avenue. After they parked the
15 van, Edwards then drove her and Tenisha back to Skipper's house on
16 Brookdale. Edwards's cell phone records confirm he was back in
17 Oakland again from 11:50 p.m. until 1:01 a.m. Later that evening,
18 Dunn and Edwards went back to their apartment in Antioch.

19 Later that night or the next morning Dunn heard Edwards talking on
20 the phone, saying he had been hanging out smoking in the parking
21 lot of his mother's apartment complex when "some shit happened"
22 and "some nigga got shot and some nigga got ran over." Dunn later
23 read in the newspaper about Lavall's murder and knew that was what
24 Edwards had been talking about.

25 On March 25, Dunn and Edwards picked up the van, filled it with
26 gas, and Dunn alone returned it to Fox. The windshield was cracked
27 and there was damage to the rear passenger door. Dunn told Fritz
28 the van had been in an accident the day before. Dunn filled out a
damage form, signing Bradley's name. Fritz knew she was not
Bradley, but she took the van back into inventory and processed the
damage paperwork. When the police later questioned Fritz about
who returned the van, she described Dunn but did not admit
knowing her.

The Oakland murder

29 When the police removed the van from the rental yard on March 27,
30 someone at Fox called Fritz and told her that the police had been
31 there, had found blood on the undercarriage, had impounded the
32 van, and wanted to talk to her. Fritz then passed that information on
33 to Bell.

34 Cell phone records showed a 14-minute call made from one of
35 Fritz's phones to Edwards's phone at 11:41 p.m. on March 27. Fritz
36 denied calling Edwards that night, but testified that Bell might have
37 called Edwards using her cell phone. During the call she heard Bell
38 say that "something had gone down in Antioch." The prosecutor
39 theorized that during this call the decision was made that Bradley
40 must be killed. On the night of March 27 Edwards also called Dunn
41 at Skipper's house, as corroborated by cell phone records, and told
42 her the police had picked up the rental van.

43 Edwards called Dunn at Skipper's house the next evening (March

1 28) and told her to come outside.¹¹ When she did Edwards was
2 waiting in his Oldsmobile Aurora with Johnson as a passenger.
3 Edwards told Dunn if she wanted to pick up any fresh clothes for
4 work from their apartment in Antioch she should take BART to the
5 Pittsburg station where he had arranged for Bradley to pick her up
6 and take her to get her clothes.
7

8 Edwards and Johnson dropped Dunn at the Fruitvale BART station.
9 Johnson expressed some doubt about whether Dunn should go to
10 Pittsburg, saying to Edwards, "You sure you want to let her go,
11 bro?" and "You sure, bro? Don't send her." But Edwards said it
12 would be "good" or "cool" and gave Dunn money for the BART
13 fare.
14

15 Cell phone records confirm Dunn left Oakland for Pittsburg shortly
16 before 6:30 p.m. She made or received calls at 6:31 (near Rockridge
17 BART), while traveling through Orinda at 6:39, in Walnut Creek at
18 6:49, and she connected to a cell tower in Pittsburg at 7:08 p.m.,
19 when she called Edwards.
20

21 Bradley was waiting at the Pittsburg station with her nine-year-old
22 son when Dunn arrived. Dunn wanted to retrieve her clothes in
23 Antioch, but Bradley said they had to go meet Edwards. Edwards
24 also called Dunn, either on the way to Pittsburg or after she had
25 arrived there, and told her to come back to Oakland with Bradley
26 and meet him at a designated gas station on Seminary Avenue. He
27 told her to "pull around back" behind the station.
28

29 On the way back to Oakland, Dunn received text messages from
30 Edwards reminding her to meet him behind the gas station and
31 saying he thought Bradley was "going to get down on us about the
32 van" and "it's out of [his] hands." He also told her to "be on point,"
33 which she called "his favorite word." The text messages were later
34 erased and were not available at trial. Cell phone records are
35 consistent with both Dunn and Bradley traveling from Pittsburg to
36 Oakland between 7:14 p.m. and 7:46 p.m. and further show that
37 Dunn and Edwards had multiple phone conversations between 6:39
38 p.m. and 7:56 p.m. In one of the later conversations, Edwards told
39 Dunn, "If something happens, get out of there."
40

41 Dunn concluded that Bradley was in danger and did not want
42 anything to happen to her in front of her son. She told Bradley to go
43 to Skipper's house instead of the gas station and, after talking to
44 Edwards's mother, Renée Gray, on the phone, told Bradley to go
45 home and handle matters with Edwards another day. Bradley left
46 Skipper's house and took her son to his father's house in Berkeley.
47

48 Shortly after Bradley left, Edwards called Dunn.¹² When he found
49 out Dunn was not bringing Bradley to the gas station he was angry
50 and hung up. He soon called back and told Dunn to call Bradley and
51 have her come back to Skipper's house. Dunn complied out of fear.
52 She then had several phone conversations with Edwards's mother,
53 hoping Gray could put a stop to Edwards's plans. Cell phone
54 records confirm calls made by Dunn to Gray at 8:23 p.m., 8:37 p.m.,
55 and 8:43 p.m. Dunn and Edwards talked several times between 8:21
56 and 8:59; by 8:53 Edwards's phone was accessing a cell tower near
57

1 Skipper's house.

2 When Bradley returned to Skipper's neighborhood at approximately
3 9:00 p.m., she was not sure which house was Skipper's. She called
4 Dunn and asked her to come outside so she could locate the house.
Cell phone records show Bradley called Dunn at 8:56 p.m. and made
one final call to her at 9:01 p.m.

5 Dunn went outside and got into the front passenger seat of Bradley's
6 car, leaving the car door open and her feet outside the car. She
asked Bradley to lend her her cell phone as a pretext to get the
7 phone away from Bradley so the police would not find it.

8 Dunn saw a man she had never seen before walking across the
9 street, approaching from behind Bradley's car. It was not Johnson.
10 He was African American, five feet eight inches tall, wearing dark
clothes, a hoodie, and a beanie. The man walked up to the
passenger side of Bradley's car and asked Dunn, "Hey, little mama,
what's your name?" Dunn jumped out of the car and ran back to
Skipper's house.

11 The man shot Bradley six times, including four times in the head.
12 He used a silver handgun. Bradley's car rolled forward, crashing
13 into a utility pole. At 9:05 p.m. the 911 call came in regarding
14 Bradley's car crash. Just at that time, Johnson's phone was also
using a cell tower near Skipper's house, the same tower Edwards's
and Bradley's phones had been utilizing.

15 The initial 911 call reported a traffic accident, but when police
16 arrived to investigate it was clear Bradley had been shot. She was
17 taken to a hospital where efforts to revive her were unsuccessful,
and she died from the gunshot wounds. The actual shooter had not
been identified at the time of trial.

18 Six casings were found in Bradley's car and at the scene, and a bullet
slug was pulled out of the car door. Five bullets or parts of bullets
19 were retrieved from Bradley's body.

20 Later that night Dunn phoned both Edwards and his mother, telling
them about the shooting. Edwards did not say much in response.
21 The next day Dunn destroyed Bradley's cell phone and threw the
parts away because she did not want anyone to find out she was the
last person to talk to Bradley.

22 *Edwards's arrest*

23 There were outstanding arrest warrants for both Edwards and Dunn.
24 Suspecting they may have been involved in Bradley's death, the
25 Oakland police were on the lookout for the two. On March 29, at
26 6:10 p.m., they saw Edwards on the street and stopped their patrol
car. As one of the officers alighted, Edwards ran and disappeared
into a house on 77th Avenue.

27 Just at that time Dunn was arriving at the scene in Edwards's car.
28 Edwards called her from his cell phone to ask her what was going on
outside, and she told him the house was surrounded by police. Cell
phone records confirm these calls occurred at 6:16 p.m.–6:17 p.m.

1 The police ordered in a SWAT team. They ultimately persuaded
2 Edwards to come out of the house, but instead of surrendering he
3 entered a crawl space under the house that was filled with water.
Police fired tear gas into the crawl space and Edwards ultimately
came out, soaking wet and muddy.

4 While police had Edwards in the back of a patrol car, Gray,
5 Syreeta Vines (the mother of Edwards's baby), Edwards's sister, and
6 Dunn all approached them, trying to communicate with Edwards.
The police allowed Vines to give telephone numbers to Edwards so
he could call them from jail. The telephone numbers were also
7 taken down by the arresting officer and would later be used to
identify Edwards as the inmate who made calls on a jail pay phone
to the phones of the women.

8 Dunn was arrested at the scene on an outstanding warrant and
9 brought in for questioning. She told the police she was sitting with
10 Bradley in her car just before she was shot and that they had been
11 heading to the gas station on Seminary Avenue to meet Edwards so
Bradley could sign "some papers." Otherwise she admitted no
12 involvement. She was released the next day, but the police kept her
cell phone.

13 A search of the crawl space under the house on 77th Avenue turned
14 up a cell phone buried half a foot deep in mud. This was the phone
Edwards had been using. A search of the house turned up a nine-
millimeter semiautomatic pistol.

15 An expert criminalist testified the shell casings recovered from the
16 Antioch and Oakland murder scenes were all fired from the same
17 gun,¹³ but it was not the pistol recovered from the house on 77th
Avenue in Oakland. The murder weapon was not introduced at trial.

18 The rear unit of the duplex on 77th Avenue where Edwards sought
refuge was rented by Bell. In the home when Edwards bolted in
19 were Fritz and two other people, Willie Ward (a friend of Bell's) and
Fritz's baby. (Bell was not at home.) About ten minutes after
20 Edwards ran in, and before he surrendered, Fritz and Ward left the
house with Fritz's baby. The two adults were put into the back of a
21 police car and a family member came and took the baby. Fritz was
released after Edwards was arrested.

22 Fritz testified she had two cell phones and had lent one of them to
23 Bell. After she was released she began making calls on one of her
24 cell phones, possibly the one that Bell had borrowed, trying to locate
Bell and her baby. There were numbers on her phone's call list
25 without names associated, apparently the phone numbers of people
who had called Bell or whom he had called when he was using the
26 phone. When she dialed one of the numbers the man on the line told
her not to tell the police anything about him when they talked to her:
27 "Keep my name out of your mouth. You don't know me." Fritz
thought the voice sounded like either Edwards or Johnson, but she
was not sure which. Since Edwards was in custody (and his cell
28 phone was buried) it may be inferred that the speaker was Johnson.

Edwards's phone calls from jail

After Edwards was arrested he made a series of phone calls from jail to various parties. Sixteen recorded conversations were introduced at trial. They recorded Edwards talking on a pay phone in the jail to the numbers given to him by the women who approached the patrol car when Edwards was arrested. Many of the calls were made to Gray's phone, but other parties would be patched into a three-way call.

The prosecution's theory was that the calls—often involving improvised codes which even the parties to the conversation had trouble understanding showed that Edwards was deeply concerned about the police investigation into the Antioch and Oakland murders at a time when he was only being held on an unrelated warrant.

The calls show that Edwards arranged to have Dunn dispose of a black nine-millimeter gun.¹⁴ The prosecutor was unsure whether this gun was used in the Antioch crimes, as both Denton and Dunn described the weapon used in the shootings in Antioch and Oakland as being chrome or silver color. It is possible, however, that the black gun was used by the second gunman in Antioch.

It was also clear from the phone calls that various people around Edwards were questioning what Dunn may have told the police, with mounting suspicion that she would "crack."¹⁵ Edwards reminded her to "stay solid" for "the team." Edwards was also worried whether there was video footage of him at Fox, but proposed to have Fritz retrieve any such evidence.¹⁶ He and his friends conferred on eliminating Denton as a witness (calling him "J. Jonah" and characterizing him as a "loose duck"). Edwards was concerned whether the police would find out about his "trip to Cancun" (which the prosecution theorized was a reference to the Antioch crimes and sometimes to Fox rental),¹⁷ and whether they would be able to connect up the two crimes.¹⁸ He constantly reminded everyone to "stay on point" for "the team." He worried about cell phone evidence. The calls also show that Johnson and Edwards spoke frequently and proclaimed their love for one another and their loyalty to "the team."

On April 1, 2006, Dunn told Edwards the police did not know the Antioch and Oakland crimes were related: they had not put all of the “pieces” together.¹⁹ In that same call she told Edwards the police had recovered his “muddy” cell phone.²⁰

Shortly after that call, Edwards called Johnson and the following dialogue was recorded:

Edwards: "Do you know they ain't even, uh ... bro, you know how the, uh, first trip we went on, to Cancun, bro?"

Johnson: "Yeah."

Edwards: "They ain't even ... they ain't even found out that trip got something to do with the trip to Mexico, bro, yet."

Johnson: "They don't know?"

1 Edwards: "Huh?"

2 Johnson: "They don't know, huh?"

3 Edwards: "No."

4 In a phone call on April 3, 2006, Vines told Edwards she was
5 "stressed" because there was "so much evidence." The "manager"
6 in Antioch had been "talking" and said he saw "three people," "two
7 darks and one light." She told Edwards "they traced the van ... to
the girl, and um, when they got to her, she was, you know."
Edwards said, "Yeah."

8 The call recorded on April 5, 2006, was a fairly clear discussion
9 about killing Dunn to eliminate her as a witness. Johnson told
10 Edwards that he and some associates—identified by nicknames—
11 got together and talked about "survive shit" and "they ain't gonna
12 just get off this shit." Dunn, he suggested, could even cause
13 problems "two or three years from now" and could "end up getting
14 grabbed and cracking later on."

15 Edwards tried to argue she should not be killed, talking about the
16 "loss" he had just taken "for the team," an apparent reference to
17 Bradley's death. Johnson expressed doubt that Dunn would take a
18 long prison sentence and stay loyal to Edwards (i.e., "what bitch you
19 know that's, that solid out here bro?").

20 Edwards at one point said he was "putting it in [his] brother's
21 hands...." Johnson told him, "it ain't really just your call right now
22 ... 'cause it's kind of ugly right now." Johnson said "the team
23 thinking about keeping this shit gangster." They were trying to buy
24 a "car" needed for "this kind of situation"—which the prosecutor
25 interpreted as a gun—and that was "the only problem last night."
Johnson said they were "moving fast" "'cause we ain't got no time
26 to be wasting." "[W]e ain't got time to be worried about no
feelings." Johnson later said, "We didn't even need to let last night
go by man, that's how serious this" is.

27 As Edwards continued to resist, Johnson advised him to "rap with
28 Mo" Skinner, a fellow jail inmate awaiting trial for a double murder.
Two witnesses in Skinner's case had been murdered while he was
awaiting trial. Johnson predicted that Skinner would tell Edwards
he "don't know what you mean about witnesses."

29 On April 14, Oakland police warned Dunn they had intercepted calls
30 which were threatening to her and suggested she take it seriously.
31 Dunn initially still failed to identify Johnson in a photo lineup, but
32 she eventually admitted she knew him as "Koont" and picked out his
33 photo. From then on she changed the way she related to Johnson
34 because she "did not want to end up dead." She left town as often as
35 possible and tried to stay away from Oakland and Antioch.

36 But Dunn was also still loyal to Edwards. She told him after the
37 interview that the police were recording the phone calls and they
38 must stop talking on the phone. The last recorded phone call in

1 evidence was one to Edwards's mother on the night of April 7, 2006.
2 Gray told Edwards that the police had some "pictures" of "the
3 rentals" and were getting ready to "snatch Meka up" and question
4 her "about the rentals."

5 Edwards was transferred to a different facility in connection with his
6 unrelated matter and was arrested on August 3, 2006, for the crimes
7 in this case. Johnson was arrested on July 20, 2006, when he was
8 hospitalized with a gunshot wound. Dunn was arrested on August 1,
9 2006, at her place of work. Fritz was arrested in November 2007 on
10 a murder warrant but was never charged.

11 *The proceedings below*

12 Edwards and Johnson both were charged with murder of Lavall and
13 attempted murder of Denton, with a special circumstance allegation
14 of murder in a kidnap attempt. In connection with both counts it
15 was alleged that Johnson personally used a firearm (former §§
16 12022.5, subd. (a)(1), 12022.53, subd. (b)), and he was charged in a
17 separate count with being a felon in possession of a firearm based on
18 a 2003 conviction for sale or transportation of marijuana. (Health &
19 Saf.Code, § 11360, subd. (a).) Both men were also charged with
20 murder of Bradley, with special circumstance allegations of
21 elimination of a witness, lying in wait, and multiple murders.

22 Dunn was originally charged as a principal in Bradley's murder, with
23 lying in wait and elimination of a witness alleged as special
24 circumstances. She was charged as an accessory after the fact in the
25 Antioch crimes. She later entered into a plea bargain with the
26 district attorney, as described in footnote 9, *ante*. She decided to
27 cooperate with the prosecution after she saw Bradley's son testify at
28 the preliminary hearing.

29 The case was tried before a jury beginning February 8, 2010, with
30 testimony taken over 14 days. Edwards presented one defense
31 witness, his sister, who testified that Bradley had been like a
32 "second mom" to him since childhood and they had an affectionate
33 relationship. Johnson presented no evidence. The defendants did
34 not testify.

35 On March 19, 2010, Johnson and Edwards both were convicted of
36 all charges and all special allegations were found true, but the
37 attempted murder of Denton was found to be without premeditation
38 and deliberation. On June 4, 2010, both defendants were sentenced
39 to life terms without possibility of parole for the murders.

40 Ans., Ex. 4 (State Appellate Opinion, *People v. Johnson*, No. A128751, 2013 WL 3242191 (Cal.
41 Ct. App. June 27, 2013).

42 **STANDARD OF REVIEW**

43 Under the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), this Court
44 may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the
45 judgment of a State court only on the ground that he is in custody in violation of the Constitution

1 or laws or treaties of the United States.” 28 U.S.C. § 2254(a). The petition may not be granted
2 with respect to any claim that was adjudicated on the merits in state court unless the state court's
3 adjudication of the claim: “(1) resulted in a decision that was contrary to, or involved an
4 unreasonable application of, clearly established Federal law, as determined by the Supreme Court
5 of the United States; or (2) resulted in a decision that was based on an unreasonable determination
6 of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d).

7 “Under the ‘contrary to’ clause, a federal habeas court may grant the writ if the state court
8 arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if
9 the state court decides a case differently than [the] Court has on a set of materially
10 indistinguishable facts.” *Williams (Terry) v. Taylor*, 529 U.S. 362, 412-13 (2000). “Under the
11 ‘unreasonable application’ clause, a federal habeas court may grant the writ if the state court
12 identifies the correct governing legal principle from [the] Court's decisions but unreasonably
13 applies that principle to the facts of the prisoner's case.” *Id.* at 413. “[A] federal habeas court may
14 not issue the writ simply because that court concludes in its independent judgment that the
15 relevant state-court decision applied clearly established federal law erroneously or incorrectly.
16 Rather, that application must also be unreasonable.” *Id.* at 411. A federal habeas court making
17 the “unreasonable application” inquiry should ask whether the state court's application of clearly
18 established federal law was “objectively unreasonable.” *Id.* at 409.

19 DISCUSSION

20 I. INSUFFICIENT EVIDENCE

21 Petitioner asserts that there is insufficient evidence to support conviction for the Antioch
22 murder and attempted murder. Petn. at m-1 to m-6. Specifically, Edwards argues there is
23 insufficient evidence because (1) eyewitnesses of the incident did not identify petitioner; (2)
24 evidence connecting petitioner to the van used in the murder does not show actual involvement in
25 the murder; (3) there were inconsistencies in the witness testimony as to how many people were
26 in the van when the murder occurred; (4) there is insufficient evidence that the cell phone records
27 are associated with the petitioner; and (6) a connection to the van and the apartment complex are
28 insufficient to show petitioner's involvement. Petn. at m-1 to m-6. Petitioner contends that

1 because there was insufficient evidence, he is due habeas relief.

2 Petitioner made the same claim on direct appeal in the state appellate court. The state
3 appellate court rejected his claim, reasoning:

4 Although Edwards was not identified by any eyewitness as having
5 been involved in the Antioch crimes, there was circumstantial
6 evidence against him going well beyond the testimony of Dunn,
7 including this: (1) Fritz testified he was involved in Bradley's rental
8 of vans from Fox; (2) Fritz saw Edwards driving one of the rented
9 vans around Oakland; (3) the last van rented for Edwards's use
10 unquestionably was the murder weapon based on matching blood on
11 its underside; (4) Fritz overheard Bell say to someone on the phone
12 that something "went down" in Antioch, inferably having to do with
13 the rented van, and cell phone records support an inference that the
14 person on the line with him was Edwards; (5) cell phone records
15 confirmed that Edwards was in Antioch at the time of the crimes
16 (see fn. 6, *ante*); (6) cell phone records corroborated Dunn's
17 testimony that she and Edwards both went to Antioch on the night of
18 March 24,²⁴ (7) Edwards's mother lived in the apartment complex
19 where the crimes occurred; (8) Edwards ran when the police arrived
20 to arrest him and buried his cell phone under the house; and (9) in
21 jail phone conversations Edwards admitted his own participation in
22 the Antioch crimes in coded language (Cancun) and discussed
23 getting rid of the surviving witness. There was more than sufficient
24 corroboration to allow the jury to use accomplice testimony in
25 assessing guilt.

26 Adding in Dunn's testimony makes the evidence even stronger, as it
27 shows the lengths to which Edwards went in distancing himself
beyond a reasonable doubt of every fact necessary to constitute the crime with which he is
charged." *In re Winship*, 397 U.S. 358, 364 (1970). A state prisoner who alleges that the
evidence in support of his state conviction cannot be fairly characterized as sufficient to have led a
rational trier of fact to find guilt beyond a reasonable doubt therefore states a constitutional claim,
Jackson v. Virginia, 443 U.S. 307, 321 (1979), which, if proven, entitles him to federal habeas
relief, *id.* at 324.

28 The Supreme Court has emphasized that "Jackson claims face a high bar in federal habeas
proceedings...." *Coleman v. Johnson*, 132 S. Ct. 2060, 2062 (2012) (per curiam) (finding the

1 Third Circuit “unduly impinged on the jury’s role as factfinder” and failed to apply the deferential
2 standard of *Jackson* when it engaged in “fine-grained factual parsing” to find the evidence was
3 insufficient to support petitioner’s conviction). A federal court reviewing collaterally a state court
4 conviction does not determine whether it is satisfied that the evidence established guilt beyond a
5 reasonable doubt. *Payne v. Borg*, 982 F.2d 335, 338 (9th Cir. 1992), *cert. denied*, 510 U.S. 843
6 (1993); *see, e.g.*, *Coleman*, 132 S. Ct. at 2065 (“the only question under Jackson is whether [the
7 jury’s finding of guilt] was so insupportable as to fall below the threshold of bare rationality”).
8 The federal court “determines only whether, ‘after viewing the evidence in the light most
9 favorable to the prosecution, any rational trier of fact could have found the essential elements of
10 the crime beyond a reasonable doubt.’” *Payne*, 982 F.2d at 338 (quoting *Jackson*, 443 U.S. at
11 319). Only if no rational trier of fact could have found proof of guilt beyond a reasonable doubt,
12 has there been a due process violation. *Jackson*, 443 U.S. at 324.

13 Petitioner asks that this court believe his version of events and details why each individual
14 piece of evidence should not be credited and could not, on its own, establish liability for the
15 Antioch crimes. Stated another way, petitioner asserts that the jury should have believed his
16 defense rather than the prosecution’s case. This claim is in essence a challenge to the jury’s
17 credibility determination in favor of the prosecution’s evidence.

18 “A jury’s credibility determinations, [however, are] entitled to near-total deference. *Bruce*
19 *v. Terhune*, 376 F.3d 950, 957 (9th. Cir. 2004). Indeed, if confronted by a record that supports
20 conflicting inferences, such as the instant case, a federal habeas court “must presume—even if it
21 does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in
22 favor of the prosecution, and must defer to that resolution.” *Jackson*, 443 U.S. at 326. Viewing
23 petitioner’s arguments under this standard, I must defer to the jury’s credibility determination in
24 favor of the prosecution’s arguments and evidence, and its rejection of petitioner’s defense. Based
25 upon an independent review of the record, I conclude that the state court’s denial of the claim was
26 not objectively unreasonable and is entitled to AEDPA deference. Viewing this evidence in the
27 light most favorable to the prosecution, a rational trier of fact could find in favor of the
28 prosecution. Accordingly, this claim is DENIED.

II. UNCORROBORATED TESTIMONY OF THE ACCOMPLICE**A. Antioch Murder and Attempted Murder**

Petitioner further contends that his conviction for the Antioch murder and attempted murder was unlawful under California Penal Code section 1111 because it was based on the uncorroborated testimony of the accomplice, Dunn. The corroboration rule is not required by the Constitution or federal law. *United States v. Necoechea*, 986 F.2d 1273, 1282 (9th Cir. 1993) (“[U]ncorroborated testimony of an accomplice is sufficient to sustain a conviction unless it is incredible or insubstantial on its face.”). However, petitioner contends that his due process right to fundamental fairness was violated when the State did not follow its own rules, specifically the corroboration rule of California Penal Code section 1111. Ptn. at m-7 to m-8. “A State violates a criminal defendant's due process right to fundamental fairness if it arbitrarily deprives the defendant of a state law entitlement.” *Laboa v. Calderon*, 224 F.3d 972, 979 (9th Cir. 2000). Specifically, petitioner contends his right to fundamental fairness was violated as Dunn's testimony was not sufficiently corroborated.

First, petitioner fails to note that Dunn was not charged as an accomplice for the Antioch murder and therefore the corroboration rule does not necessarily apply to the Antioch crimes. The state appellate court described the application of Section 1111 as follows:

Turning first to the Antioch crimes, the murder of Lavall and the attempted murder of Denton, the accomplice testimony rule arguably does not apply at all, because Dunn was not charged as a principal in the Antioch crimes, but rather as an accessory after the fact. (*People v. McKinzie* (2012) 54 Cal.4th 1302, 1353; *People v. Daniels* (1991) 52 Cal.3d 815, 867 [“mere accessories are not accomplices under section 1111”]; §§ 31–32.) There was no evidence that Dunn was involved in the Antioch crimes except for her role in returning the van to Oakland.²³

As the trial court did not conclude that Dunn was an accomplice, as a matter of law, it was up to the jury to assess Dunn's role in these crimes and determine whether the corroboration rule should apply. *People v. Fauber*, 2 Cal. 4th 792, 834 (1992) (“Whether a person is an accomplice is a

1 question of fact for the jury unless there is no dispute as to either the facts or the inferences to be
2 drawn therefrom.”). Because I must presume that the jury resolved all fact issues in favor of the
3 prosecution, and I must defer to that judgment, I conclude that the jury determined that Dunn was
4 not an accomplice to the Antioch crimes and the corroboration rule does not apply.

5 Further, even if the corroboration rule applies, the prosecution presented substantial
6 additional evidence tying Edwards to the Antioch crimes. Edwards argues that Dunn’s testimony
7 was uncorroborated because the prosecution did not submit independent evidence supporting
8 “Dunn’s story that she and the petitioner picked up the van in Antioch and brought it back to
9 Oakland.” However, to satisfy the corroborative evidence rule, the prosecution “need not
10 corroborate every fact to which the accomplice testified.” *People v. Fauber*, 2 Cal. 4th at 834.
11 Corroborative evidence is “sufficient if it tends to connect the defendant with the crime in such a
12 way as to satisfy the jury that the accomplice is telling the truth.” *Id.* As discussed above, and as
13 the Court of Appeal found, there was significant circumstantial evidence, in addition to Dunn’s
14 testimony, connecting Edwards to the Antioch crimes that supported and corroborated her
15 testimony. *See, supra* Section 1. California’s corroboration rule does not require the prosecution
16 to present specific evidence confirming Dunn’s testimony as to the specific events she recounted.

17 As Dunn was not an accomplice to the Antioch crimes, Section 1111 does not apply to
18 these convictions. Further, Dunn’s testimony was not uncorroborated as the prosecution presented
19 substantial circumstantial evidence tying Edwards to the Antioch murder and attempted murder.
20 Petitioner’s constitutional right to fundamental fairness was not violated by an unreasonable
21 application of Cal. Penal Code section 1111. Accordingly, Edwards’ petition is DENIED on this
22 claim.

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26 **B. Murder of Aberial Bradley**

27 Petitioner argues that his conviction for aiding and abetting the murder of Aberial Bradley

1 was unlawful under California Penal Code section 1111 because it was based on the
2 uncorroborated testimony of Dunn. Ptn. at m-9. Petitioner contends that his due process right to
3 fundamental fairness was violated when the state did not comply with its corroboration rule. Ptn.
4 m-7 to m-8.

5 Petitioner argues that corroborating evidence must tend to connect the defendant to the
6 crime itself without aid or assistance from the accomplice's testimony. Ptn. at m-6-m-7.
7 California's corroboration rule requires only that the corroboration "tends to connect the defendant
8 with the crime in such a way as to satisfy the jury that the accomplice is telling the truth." *People*
9 *v. Fauber*, 2 Cal. 4th 792, 834 (1992). Dunn's testimony was sufficiently corroborated as to
10 satisfy California law. The testimony of Bradley's son partially corroborated the movements of
11 Dunn and Bradley and the use of their cell phones during the drive. RT 798-811. Cell phone
12 records confirm Dunn's testimony as to her movements to and from Pittsburg and the various calls
13 made during that time. *See e.g.*, RT 1911-13. Other records show calls between Edwards and
14 Dunn during Dunn and Bradley's trip to Pittsburg. *See e.g.*, RT 1917.

15 Moreover, the state appellate court found cell phone records of the petitioner's movements as
16 additional corroboration of Dunn's testimony by reflecting the movements of petitioner and co-
17 defendant, linking defendant to the crime itself:

18 Cell phone records further showed that both Edwards and Johnson
19 were where they needed to be to carry out the plot, both when the
20 plan was to lure Bradley to the Seminary gas station, and when the
21 plot finally came to fruition. Lieutenant Medeiros testified on the
22 basis of the cell phone records that the "muddy phone" (Edwards's)
23 connected to a cell tower near the Seminary Avenue gas station at
24 7:56 p.m., and 40 seconds later Johnson's phone "was hitting the
25 same cell tower...." Those records are sufficient corroboration that
26 Edwards and Johnson were waiting together at or near the gas
27 station for Dunn to deliver Bradley to them.²⁵

28 Edwards's phone was again accessing a cell tower near the 77th
29 Avenue house at 8:16 p.m., and Johnson's was also accessing the
30 same cell tower at 8:28 p.m., again suggesting the two men were
31 traveling together. Both Johnson's and Edwards's cell phones were
32 utilizing the same cell tower near the 77th Avenue house at 8:42
33 p.m.

34 And they were on the move. Both Johnson's and Edwards's cell
35 phones were in the vicinity of the killing on Brookdale Avenue
36 when it happened. Bradley accessed the cell tower at 3701 High
37 Street (near Skipper's house) at 9:01 p.m., Edwards accessed it at

8:59 p.m. and again at 9:04 p.m., and Johnson accessed it at 9:05 p.m. Thus, the cell phone records corroborated Dunn's testimony about the sequence of events and the phone calls that were exchanged, establishing that Johnson and Edwards had the opportunity to commit the murder.

Ans., Ex. 4 (State Appellate Opinion, *People v. Johnson*, No. A128751, 2013 WL 3242191, at *14-15 (Cal. Ct. App. June 27, 2013)).

Petitioner concedes that the prosecution presented evidence corroborating Dunn's testimony, but challenges the weight and adequacy this evidence should be afforded. In effect, petitioner is again challenging the jury's credibility determination that the prosecution's evidence, rather than his defense, should be credited. A jury's credibility determinations are entitled to near-total deference and this court must conclude that the jury's decision to credit the prosecution's evidence did not violate petitioner's right to fundamental fairness. *Jackson*, 443 U.S. at 306. The prosecution presented corroborating evidence of Dunn's testimony and it appears that the jury found this evidence credible. The state court's denial of petitioner's claim is entitled to AEDPA deference. This claim is DENIED.

CONCLUSION

The Court of Appeal's adjudication of Edwards' claims did not result in decisions that were contrary to, or involved an unreasonable application of, clearly established federal law, nor did they result in decisions that were based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. Accordingly, the petition is DENIED.

A certificate of appealability will not issue as reasonable jurists would not “find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Edwards may seek a certification of appealability from the Ninth Circuit Court of Appeals.

The clerk shall enter judgment in favor of respondent and close the file.

IT IS SO ORDERED.

Dated: November 22, 2016

W.H.O.
WILLIAM H. ORRICK
United States District Judge